

DOCKET FILE COPY
ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-3860 MAIL SECTION
31804

JUN 22 11 30 AM '93

In re Applications of)	MM DOCKET NO. 93-51
)	
MARTHA J. HUBER)	File No. BPH-911114ME
)	
RITA REYNA BRENT)	File No. BPH-911115MC
)	
MIDAMERICA ELECTRONICS SERVICE, INC.)	File No. BPH-911115ML
)	
STATON COMMUNICATIONS, INC.)	File No. BPH-911115MU
)	
For Construction Permit for a)	
New FM Station on Channel 234A)	
in New Albany, Indiana)	

DISPATCHED BY

ORDER

Issued: June 18, 1993;

Released: June 21, 1993

This is a ruling on Motion For Production Of Documents Pursuant To Enlargement filed on June 4, 1993, by Rita Reyna Brent ("Brent"). An Opposition was filed on June 15, 1993, by Martha J. Huber ("Huber").

Financial issues were added against Huber (FCC 93M-314) on June 1, 1993. Huber relies on a bank letter. Brent seeks the following categories of documents:

1. All documents relating to the ongoing banking relationship between Applicant and the Bank for the period October 29, 1966 (or prior thereto) through October 29, 1991.
2. All documents relating to the date on which PNC Bank, Indiana, Inc., succeeded to the interests of Citizens Fidelity Bank And Trust Company.
3. All documents relating to or reflecting the knowledge of PNC Bank, Indiana, Inc., of the financing letter dated October 29, 1991, issued to Huber by Citizens Fidelity Bank And Trust, and the intention or willingness of PNC Bank, Indiana, Inc. to assume the undertakings of financing.
4. All documents relating to Huber's relationship with the Bank from October 29, 1991 to the present.

Huber opposes the motion because it will delay the completion of discovery beyond the thirty days from the addition of the issues. See 47 C.F.R. §1.229(e)(1). The issues were added on June 1, 1993. The documents should be produced by June 30, 1993. Therefore, the parties will have met their obligations under the expedited procedures.

There also may be document discovery and a deposition of a non-party bank. For that purpose, the rules contemplate discovery beyond thirty days. For example, depositions of non-party witnesses still require 21 days' notice. 47 C.F.R. §§1.315 and 1.333.¹ Therefore, the discovery sought is not in violation of the Commission's rules. See 47 C.F.R. §1.229(e)(3) (30 day limit for completion of discovery on enlarged issues shall not apply where persons who are subject to additional discovery are non-parties).

Huber also asserts that Brent should have requested the documents with her Motion To Enlarge Issues which she had filed on April 26, 1993. Brent did ask for the documents submitted by Huber to Citizens Fidelity Bank in her Motion To Enlarge Issues. While the request was not as inclusive as it might have been, the effort was made and the second discovery motion is not oppressive in view of the limits imposed by the Presiding Judge. Therefore, Brent will not be foreclosed from her discovery on the added issues.

It is recognized that the documents that are sought relate to a banking relationship. And it is noted that Huber was assigned the burdens of proceeding and proof with respect to establishing the relationship. If the documents are not introduced at the hearing as Huber exhibits, there is a possibility of adverse inferences being drawn. If documents sought by Brent are not produced, they may be rejected as hearing exhibits. For purposes of complying with this ruling however, Huber is only required to produce the documents sought which are in her possession or which she intends to offer as exhibits at the hearing. Otherwise, Brent will need to subpoena any bank records which cannot be obtained from Huber.

Discovery

The first specification is too broad. Huber need produce only those documents in that category which were relied upon by Huber in making her certification and, specifically, those documents relied upon by Huber to establish a banking relationship.

The second specification also is too broad. Huber need only produce a document (or documents) which will establish the fact that PNC succeeded to the interests of Citizens and the operative date. Huber also must disclose the document (or documents) which establish that PNC, as the successor in interest, assumed the commitment to Huber made under the Citizens letter of October 29, 1991.

¹ The parties were alerted of the time problems that could be encountered with non-party witnesses. See Prehearing Conference Order, FCC 93M-114, released March 19, 1993 at Para.8 (request should be submitted to expand discovery beyond the prescribed thirty days). Since the parties have financial issues added, and there are at least two banks that will be subpoenaed, discovery cannot be expected to be completed within thirty days of the added issues. But the hearing date, which was set to meet the deadline for proposed findings and an initial decision, remains unchanged.

All of the documents requested under the third and forth specifications must be produced by Huber.

Rulings

Accordingly, IT IS ORDERED that the Motion For Production Of Documents Pursuant To Enlargement filed by Rita Reyna Bryant on June 4, 1993, IS DENIED in part and IS GRANTED in part.

IT IS FURTHER ORDERED that the documents required to be produced by Martha J. Huber which are in her possession or under her control SHALL BE DELIVERED to the offices of Brent's counsel by 4 p. m. on June 30, 1993.²

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

² Counsel for Brent and counsel for Huber were advised by telephone call that copies of the Order were available for pick up at the office of the Presiding Judge on the day of issuance.